

MINORITY RIGHTS IN THE ERA OF GLOBALISATION AND REGIONALISATION

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1. Cornerstones

What does the 21st century, an era characterised by global challenges and strengthening regional co-operation on the continents, hold in store for the minorities? Countries of the world experience some kind of duality. Globalisation interacts with / influences economic and financial affairs, culture and it even influences language usage. Market and free trade are factors bearing down on national culture and identity; they erode their resistance to the extent of jeopardising national culture. To date, people are in a position to judge the advantages and drawbacks of globalisation based on first-hand experience.¹ It is typical of our accelerated world that intercontinental financial transactions are a matter of minutes; communication has advanced to the stage where even wars and acts of terrorism are known to all, thanks to the broadcasting activities of the TV channels; the spread of the Internet has brought about a new communication system, e-governance is becoming the rule; the economic and scientific elite of the world communicates exclusively in English. Of course, further characteristics could also be listed. Without aiming at completeness, let us mention a few circumstances of relevance for the entire world: shortage of natural resources, climate change, migration flows, growth of the population of the Earth, especially on the African continent; China and India at the population growth ceiling, ageing population in Europe. In the Arab countries religion, and its relationship to other religions, plays an outstanding part. Globalisation phenomena have their positive aspects, but they also imply threats that will require close attention in the 21st century.

Another process, acting against the above phenomena, is discernible partly in the aspirations to enforce the self-determination rights of the nations, and partly

¹ János MARTONYI: *Európa a globális rendszerben* (Europe in the global system). 2005. Nos 11-12, pp. 6-8.

in the endeavours aiming at regionalisation.² Simultaneously with the systems change in Central and Eastern Europe former federations dissolved, several new countries were formed, and the frontiers defined by the peace treaty following World War 2 were modified. The collapse of the Soviet Union, the disintegration of Yugoslavia and the split into two of Czechoslovakia clearly showed the historical obsolescence of these artificial constructs: their inner tensions have made it impossible for the federations to survive. Recent developments include the declaration of independence in Montenegro and Kosovo. Geographical fragmentation, however, is concurrent with intensifying integration in Europe. To date, the European Union has 27 Member States. Its crises notwithstanding, integration makes its effects felt in increasingly diverse areas, and although no one would call the Union a federation, a quasi-federal structure has evolved in Europe.

There is also a third process in progress at the level of the nation-State and below that. The 21st century has witnessed an intensifying search for identity and its recognition; a yearning for identity in a context defined by globalisation and continental-level regionalisation. The relevant claims are expressed mainly by countries of small or medium size that encounter more difficulties when it comes to carrying through their ideas at regional level, while having to meet their regional co-operation obligations. The countries concerned, and especially the states which have regained their national sovereignty only recently, are busy investigating how to enforce their national interests in the regional setting.³ Below state level, the national minorities, language communities, state-constituent entities demand the acknowledgement of the collective rights of their community, the expansion of the scope of personal and territorial autonomies, with reference to diversity and the advantages of a regional arrangement. On the one hand in those parts of Europe, where national/ethnic tensions play a decisive part in a given country, the established limits are being tested by the issue of split up and separation justified by the self-determination rights of the people. In the Western part of Europe, on the other hand, in addition to the traditional minority problems, if any, the new minorities, i.e. the immigrants,

² László TRÓCSÁNYI: *La place et le rôle des régions et des communautés dans la construction européenne. Les collectivités territoriales et l'intégration européenne* (Place and role of regions and communities in the construction of Europe. Territorial communities and European integration). Conference Proceedings, 19 November 2004. *Les collectivités territoriales et l'intégration européenne* (Territorial communities and European integrations). Texts collected and edited by Nicole Lerousseau and Jean Rosetto. Presse Universitaires Francois-Rabelais, Tours, 2005, pp. 32-34.

³ Jacques SANTER: *A kis és közepes méretű országok mozgásterének politikai és jogi keretei. Képünk az Unióról, helyünk az Unióban* (Political and legal limits of the latitude of small and medium-sized countries. Our image of the Union; our place in the Union). Eds: Katalin Szajbély and Julianna Sára Traser. Pólay Elemér Foundation, Szeged, 2006, pp. 29-35.

raise further problems: what entitlements should an immigrant community have; what can the host country expect from the immigrants, and what minimum entitlements should it guarantee for them.

National minority, minority policies and language rights seem to be moving into the limelight in the 21st century, partly to offset the deficits of globalisation and regionalisation. It is a must to find out what effects the reinforcement of national and ethnic identities and the demand to enforce the collective rights of the minorities will have on nation-states; to what extent political strivings to expand minority rights are to be regarded as a natural phenomenon, and what reactions they may provoke on the side of international and national communities.⁴

2. Minority models⁵

The place of the national/ethnic minorities in a state can be defined on the basis of the relationship of the majority and the minority. In most cases minorities are not considered state-constituent factors: national constitutions refer exclusively to the majority nation (e.g. what is the “Slovak people”, what is the “Romanian people”), and hence minorities appear automatically on the scene only as members of the majority nation. At the same time, national constitutions do include provisions applicable to minorities. Some national constitutions (e.g. the Finnish, Spanish, Belgian, Slovenian) strive to settle the minority issues already at constitution level, through the institution of special state organisation arrangements or language rights. True, the main difficulties concerning the situation of the minorities are not constitution-level ones, but minority protection is often imperfect despite the constitutional and statutory guarantees. The minority models do not necessarily derive from the constitution: a country is assigned to a given minority model category – exclusive, cooperative or inclusive – on the basis of its everyday practice.

2.1. The exclusive model

Thanks to the control function of international organisations, an openly exclusive model would be practically inconceivable nowadays. However, hidden exclusion has prevailed. It may take the form, for example, of obligations im-

⁴ Joseph YACOB: *Les minorités dans le monde quelle suite a l'Etat-nation* (Minorities in the world that follow the nation-state) <http://www.home.um.edu.mt/mjhz/contents/samples/yacoub.fr>

⁵ Francis DELPÉRÉE: *Les modes classique de protection des minorités. L'unité et la diversité de l'Europe. Les droits des minorités. Les exemples belge et hongrois.* (Classical modes of minority protection. Unity and diversity of Europe. Minority rights. The Belgian and the Hungarian example.) Under the direction of Francis Delpérée and László Trócsányi. Bruylant. 2003, pp. 96-103.

posed on the minority by the majority – on grounds of protection of the linguistic rights/culture of the majority – that violate the linguistic rights of the minority and are hence discriminatory. Given the cautious attitude of the international fora and the sensitiveness of the majority nations, the identification and remedy of hidden exclusion is not a simple task yet, but if a minority community takes it upon itself to “complain” to the international fora, that can promote the termination of hidden exclusion.

2.2. The co-operative model

As a default case, in the co-operative model the majority nation provides the minority rights that are identical with those of the majority, driven by the principle of equality. Theoretically, this could be called a partnership relation with minority protection regulations that express certain rules to be observed by individuals belonging to the minority. However, in this partnership framework the majority nation provides the minorities formal equality to avoid discrimination, but its partners are the individual members of the minorities, not the minority communities themselves. The legislation is of an individualistic nature, even if the given right can only be exercised collectively.

2.3. The inclusive model

In the inclusive model, the majority nation regards the minorities not only as individuals, but also as communities. Consequently, it provides as well for collective, as for individual entitlements to minority communities and their members, and the minority community itself can also be the beneficiary of the entitlements concerned. The model contains the self-governing rights of national minorities, the protection of their interests and other responsibilities assumed by the state, as well as the minority ombudsman function. In the inclusive model, minorities can appear in the state organisation system independently, which means that they can have their own independent institution system. One form of this latter example is when the minority is provided almost full autonomy to administer its affairs in an autonomous area, a region, canton or a federal entity. In this case, the minority is not only a constituent factor of the state, but it actually has its proper legislative and executive powers in specific matters. In territorial arrangements of this kind, the minority can actually be the majority in the area concerned, in which case minority protection regulations shall be applied with regard to those who are in majority in other areas of the country.

We find examples of all three models in the world. The fact whether a given country implements one or the other model, depends on – among others – its

historical traditions, the interrelationship of the members of the majority and the minority, the interest enforcement capacity of the minority and the economic development level of the country.

3. Minority policies and the state system

3.1. Regionalism as a form of minority rights enforcement

The nation-state concept of the 19th century has undergone modifications since the second half of the 20th century to the extent that today national politicians can no longer believe that nation-states can shut themselves behind their frontiers. The apparent omnipotence of the nation-state corroded under the effect of economic, financial and cultural globalisation on the one hand and the cession of certain national sovereignty elements to the European integration agencies following World War 2 on the other. International economic integration weakens the defence capacity of the state and, on the other extreme, it intensifies the demand for regionalism. The European Union itself is in favour of regional catching-up via the cohesion policy. Ever since the end of the 20th century these factors have been reinforcing the quite logical aspirations of national minorities/language communities to claim certain jurisdictions and collective rights within the state. Wales and Scotland, for example, are excellent examples of the preservation of linguistic identity and culture in a regional setting.⁶

The claims of the minority and the emphasis on cultural diversity sometimes generate suspicion on the side of the majority population of a country. In such cases, the state attempts to put an end to the undesirable minority strivings with reference to “order”, “security” and “constitutionalism”. This is what happened for example in France with regard to the issue of Breton language and culture when the Constitutional Council blocked the state funding of Breton-language schools with reference to constitutionalism.⁷ France is also the model for other states: for example, Romania, Slovakia or Turkey refuse to recognise the collective rights of minorities and prefer to adhere to the French practice. Constitutional law provides for the individual rights of the minorities based on the principle that “all men are equal”, but it makes no effort to recognise the minorities as communities and it considers the elevation of minority identity to the collective level a threat to the majority.

⁶ Colin H. WILLIAMS: Hivatalos kétnyelvűség és alkotmányos reform az Egyesült Királyságban (Official bilingualism and constitutional reform in the United Kingdom). *Pro Minoritate*, Spring 2006, pp. 102-129.

⁷ Resolution No. 2001-456. of the Constitutional Council.

3.2. Secession right

In homogenous regions where the minorities represent a massive majority and have a strong identity, the hidden or unhidden objective may be the achievement of the full autonomy of the region or at least its autonomy providing quasi-independence. Does a minority have the right to break away from its country? The general opinion on the issue is negative. Secession will only be regarded as legitimate if the area inhabited by the minority had been forcibly annexed to another country, or the minority must endure such humiliation that makes its secession justified.⁸ Cultural diversity in itself, however, does not substantiate secession. It is an open question who, what forum, can legitimise secession, since no judicial forum has such powers. The case of Kosovo demonstrates the differences in the reactions of the international community to a declaration of independence of this type. Typically, countries with significant minorities refused to recognise Kosovo's independence based on international legal concerns. In their eyes, the independence of Kosovo is a dangerous example.

3.3. Autonomy aspirations

Regionalism does not automatically provide for autonomy of the minorities. Autonomy aspirations of the latter appear more forcefully if the minority represents a major proportion of inhabitants in a specific area, and its different language and culture makes autonomy necessary.⁹ Autonomy may take the most different forms. A distinction can be made between cultural / personal or territorial autonomy. Autonomy has a special legal status. In matters assigned to its competence it commands independent political and administrative powers which manifest themselves in autonomous legislative and executive functions. For example South Tyrol or the German-speaking community in Belgium enjoy such special legal status.¹⁰ The autonomy has the ad-

⁸ Roman le Coadic: Identités et globalisation (Identities and globalisation). *Cultural collaboration review of the Maison franco-japonaise*. Autumn 2004 issue. http://www.breizh.net/galleg/identite_globalisation.htm

⁹ Balázs VIZI: A kisebbségi autonómia nemzetközi feltételeiről (On the international conditions of minority autonomy). *Pro Minoritate*. Spring 2008, pp. 54-63. Sára GÖRÖMBEI: Az autonómia gyakorlati megvalósítása (Implementation of autonomy in practice). *Pro Minoritate*, Spring 2008, pp. 64-69.

¹⁰ For a comprehensive review of the German-speaking community in Belgium, see: Jenő BANGÓ: A vallon kakas és a flamand oroszlán között. Belgium német nyelvű közössége (Between the Walloon cock and the Flemish lion: The German-speaking community in Belgium). Gondolat. 2007; Karl-Heinz LAMBERTZ: Les droits collectifs de protection des minorités et l'exemple de la Communauté germanophone de Belgique. (Collective minority protection rights and the example of the German-speaking community in Belgium), *L'Unité et la diversité ... op.cit.*, pp. 125-132.

vantage that it does not threaten the unity of the country, but the minority community can exercise its quite extensive entitlements autonomously. In an autonomy, it is important that the minority should have a say of merit in decisions of relevance to it; administer its internal affairs itself; exercise the autonomy functions through its legitimate representatives, and have adequate financial instruments to assert its powers.

3.4. Federal solutions

In a country inhabited by several nations, federation may be one of the instruments to solve the minority issue.¹¹ Suffice it to refer to the examples of Switzerland and Belgium in Western Europe or Bosnia-Herzegovina on the Balkans. Federation is what consolidates the widely different 26 Swiss cantons into one country. The federation – a unifying type of federation in the case of Switzerland – amalgamates four official languages, three major natural regions, two main religions and lots of differences. The country has been created to preserve the differences while nurturing a common national spirit. In Belgium, to the contrary, federation separates instead of unifying. The Unitarian Constitution of 1831 became untenable in the 20th century; the linguistic communities of the country demanded a federation instead, which was finally created as a result of gradual decentralisation in 1993. Nevertheless, the separation process cannot be regarded as being finished yet, since some Flemish political powers would prefer the confederation to the federation. In many respects federation is the answer to the minority issues, but it cannot solve every problem and the emphasis on the unsolved minority issues by the francophone party provokes antipathy on the Flemish side.

The constitution of the state of Bosnia and Herzegovina was an annex (!) to the Dayton Peace Accords (1995). The country consists of two political entities: the federation of Bosnia and Herzegovina representing 51% of the country – cantons with Bosnian and Croatian majority –, and the administratively uniform Serb Republic. Since the Dayton Peace Accords, the country has been under international control, and it is probably this circumstance that has kept it in one in the final analysis. Note in addition to the above that every former Central and Eastern European federation has dissolved, and it seems that the federalist ideology enjoys no support in this area.

¹¹ For more detail on the role of the federations, see: Maurice Croizat: *Le fédéralisme dans les démocraties contemporaines* (Federalism in the contemporary democracies). Montchrestien, 1999.

3.5. Multiculturalism

Mainly due to migration flows, multiculturalism has appeared in the English-speaking countries as a philosophical trend which rejected the idea of integration based on assimilation. A country must accept its multiple identity. This may include immigrants as well as traditional national minorities. Minorities – whatever their origin – are granted special entitlements to preserve and develop, as well as to propagate their cultural heritage. In this case, minority identity is given a positive content and reinforcement. Prominent examples are the United States, the United Kingdom, Canada and South Africa. These countries have introduced preferential rules for the minorities in order to prevent discrimination. Every community has the right to preserve its identity in Great Britain and every individual has the right to join a community or quit it. Knowledge of the English language is no requirement and communities are protected by an extremely severe anti-discrimination act. For this reason, Great Britain has become a highly attractive host country for Muslims and black people. Multicultural society, however, has its shady side. There are some disturbances in the school system; unemployment and crime are on the rise. In consideration of these circumstances, the liberal ideology is now undergoing certain modifications.

4. Minorities and security policy

Substantial changes have taken place over the past 20 years primarily in the attitude of the international community towards minorities. More intensive attention to them is justified among others by concerns for the stability of international relations, the aim to minimise risk factors, and by security policy considerations. To date, international organisations emphasise the preventive aspect of minority protection, through the definition of normative rules and the operation of monitoring systems.¹² Driven by security policy considerations, the international organisations strive to exert pressure on individual countries to make it possible to alleviate tension in the majority/minority relation, and to make the states adopt a more inclusive policy in relation to minorities. The NATO, the European Union, the Council of Europe and the OSCE are all organisations which monitor the situation of minorities and act even as mediators in cases of emergency through their respective systems of instruments, primarily via normative rules. The OSCE is an organisation dedicated to act, if necessary, as mediator and finally, as manager of inter-ethnic conflicts and crises.¹³

¹² Gudmundur ALFREDSSON: Kisebbségi jog: nemzetközi standardok és ellenőrzési mechanizmusok (Minority law: International standards and monitoring mechanisms). *Régió. Kisebbség, politika, társadalom*. 1998. Vol.9., No.4.

¹³ Baptiste CHATRÉ: Vers un régime européen de protection des minorités (Towards a European regime of minority protection). *Annuaire Francais de Relations Internationales* 2007. Vol. VIII., pp. 249-263.

At the time of the definition of the Copenhagen political and economic criteria (1993), the European Union defined respect of minority rights as a political criterion of accession to the European Union. The European Council has made it mandatory for the countries joining the Union after 1989 to ratify the European Convention on Human Rights and hence, indirectly, the adoption of Recommendation No. 1201, an additional protocol on the rights of national minorities to the European Convention on Human Rights. Amongst the above-listed four organisations, OSCE and the Council of Europe do not possess coercive means, but they can exert significant influence to promote the enforcement of minority rights and to ensure the peaceful settlement of disputes. To the contrary, NATO and the European Union have more extensive arsenals of political instruments; they would be more capable of exerting pressure in case of the violation of human – and hence minority – rights in a Member State and especially in a candidate country. The European Union has adopted a very cautious attitude to minority rights, to indicate that it does not intend to intervene in the internal affairs of individual Member States, so it is a major achievement that the Lisbon Treaty already includes the term “minority rights”. In any case, this may serve as a basis for reference for minorities in the future.¹⁴

5. Renaissance of minority issues in the 21st century

The change of the regime in Central and Eastern Europe opened sluiceways in regard of the treatment of the minorities. Previously, it had been almost forbidden to give a thought to the minority issue. The Soviet Union proclaimed the friendship of the people of the big Soviet Union on an ideological basis. The superpower did not want the minority issue to come to light. Almost every Central and Eastern European country pursued forced assimilation policies. Leaders of the former socialist countries did not stand up for the protection of the minorities and the Hungarian state and party leaders too, were at a loss whenever it was mentioned in non-official circles that there were almost 3 million ethnic Hungarian residents in the neighbouring countries. Minorities enjoyed no legal protection; they were victims of forced assimilation. Of course, there were also some good examples: multinational Yugoslavia, under the leadership of Tito, a dictator himself, was more tolerant towards minorities, and the federal system of the Federal Social Republic of Yugoslavia was an important instrument of minority protection.

¹⁴ Árpád GORDOS: Az európai integráció és a kulturális értékek megőrzése (European integration and preservation of cultural values). Árpád Gordos –Bálint Ódor: Az Európai Alkotmányos Szerződés születése (Birth of the European Constitutional Treaty). HvgOrac. Budapest, 2004, pp. 159-169.

Nevertheless, the significance of the minority issue is not limited to Central and Eastern Europe: the search for minority identity has demonstrably intensified in other countries as well. Suffice to refer to the Bretons, the Alsatians, the Catalans, the Basques, the Welsh and the Scots, the French-speaking minorities living close to Brussels but in settlements belonging to Flanders, the German-speaking community in Belgium, South Tyrol etc. The French State Council and Constitutional Council had to face the fact that efforts were made in Bretagne to launch state-funded education in Breton language. In September 2008, almost 10 000 people demonstrated in Nantes in favour of the protection of Breton culture and language. In Barcelona, the Catalans marched on the streets to protect their language rights.¹⁵ In Wales, the number of pupils studying in the local language as well as people declaring themselves Welsh has been on the rise. According to the census of 1991, there were 508 098 Welsh people; by 2001, their number rose to 575 604. The government of the Welsh National Assembly set the target to raise the number of Welsh speakers by 5% by 2011 relative to the 2001 census data. In Scotland, the Scottish National Party criticises sharply the British Government, because the British Cabinet intends to exercise control over public expenditure already approved by the Scottish Parliament. In Scotland, although less interest is shown in the Gaelic language, the Scottish Parliament passed the Gaelic Language Act in 2005 in order to give formal recognition to Gaelic as official language in Scotland, commanding 'equal respect' with English.

Diversity in Central and Eastern Europe adds further details to the above state of affairs: there are ethnic Hungarians in minority primarily in Romania, Slovakia and Serbia.¹⁶ The Hungarian leaders of the Hungarian population of 1 700 000 living in Romania demand the establishment of an independent Hungarian-language university, whereas others would like to have at least cultural autonomy. The Hungarian/Slovakian relationship has been tense for years, and both parties lay the blame for its deterioration on the other. Hungarians living in Serbia see the recognition of the special legal status of Voivodina (Vajdaság) as the pledge of the protection of their minority rights. Serbia went through its own Trianon: today, a large proportion of the Serbian population lives in minority in Bosnia-Herzegovina, Kosovo, Montenegro and Croatia. There is a significant Russian-speaking minority in the Baltic states, the same

¹⁵ For these news see the homepage of eurominority.eu.

¹⁶ For more details on the crossborder Hungarian ethnic minorities, see: Hungarian Minorities and Central Europe. *Publications of the Research Group of Regional and Minority Cultures*. Pázmány Péter Catholic University, 2001, p. 320; Frederic SIERADSKI: Perspectives juridiques et politiques de la question des minorités magyares d'Europe centrale (Judicial and political perspectives of the question of magyar minorities in Central Europe). *Annales de l'École Doctorale de Lille*, 1999, pp. 135-234.

as in Ukraine, and Silesia has a German-speaking minority. Beside the national minorities, the situation of the Roma population is also a major issue in Europe and in particular in Central and Eastern Europe. The headcount of the Roma population has shown significant increase, but their social integration has been rather cumbersome and the attitude of the majority population to the Roma is unfavourable, laden with prejudices.

6. Novel instruments of the treatment of minority issues

The change of the regime in Central and Eastern Europe gave a new impetus to the development of the legal instruments of minority protection. The standard system of minority protection is guaranteed today in Europe by the provisions of national constitutions and moreover, by international conventions, criteria set by the European Union, monitoring systems of international organisations and the European Court of Human Rights. The international conventions can no doubt be regarded only as soft law, standards and hence, minority protection has remained the responsibility of the countries concerned. Bilateral friendship/co-operation agreements concluded by some countries and covering the minority protection issue are also of special relevance. Many Central and Eastern European countries passed so-called preference acts or status acts which define the relationship of the mother country and the corresponding nationalities abroad. The lawfulness of these acts, a highly sensitive issue which has been the subject matter of fierce political disputes, cannot be questioned any more, considering the recommendation of the Venice Commission, and the fact that the relevant political debates also seem to have subsided.¹⁷

It was after the termination of the cold war that the Council of Europe could have the Charter for Regional or Minority Languages (ECRML) adopted in 1992 and the Framework Convention for the Protection of National Minorities in 1995. The ECRML entered into force in 1998, and it is actually the only multilateral document devoted exclusively to language protection. The importance of the ECRML lies in the recognition of linguistic diversity as a European value to be protected by Europe. The ratifying states are obliged to take measures through the Charter to ensure that regional or minority languages should not disappear and/or their usage should strengthen. However, the ECRML has so far been ratified by no more than 23 states; that is, many countries failed to sign or ratify it, including such countries of importance from the point of view of regional or minority languages as e.g. Belgium, Bulgaria, Estonia, France, Greece, Latvia, Lithuania, Russia and Turkey. This is a sign that, for ideological or constitutional law reasons, the countries concerned do not want to implement the Language Charter in practice.

¹⁷ Péter PACZOLAY: Les méthodes nouvelles de protection des minorités. (New methods of minority protection) *L'Unité et la diversité*..... op.cit., pp. 109-124.

The Framework Convention for the Protection of National Minorities has been ratified by 39 Member States, but the countries not having signed/ratified it for constitutional or political reasons include Belgium, France, Greece and Turkey. Belgium did sign the Framework Convention in 2001, but it has not ratified it. Despite the Opinion of the Venice Commission adopted in March 2002, the concept of minorities is interpreted differently by the Flemish and the French-speaking communities and in the Kingdom of Belgium, suffering from so many institutional crises, the political disputes concerning the protection of minority rights affect the relationship of the linguistic communities. The French Constitutional Council declared the Framework Convention to be contrary to §5 of the Constitution of 1958 and consequently, the country did not ratify it.¹⁸ In Turkey, an EU accession candidate country, the case of the Kurdish minority is a political issue that prevents Turkey from signing and ratifying the Framework Convention. Nevertheless, countries that do not sign or ratify the Framework Convention usually declare that the prohibition of discrimination represents the basis of their constitutional system. All in all, on 4 October 2006, the Parliamentary Assembly of the Council of Europe invited the countries which have not yet signed or ratified the Framework Convention to join the Framework Convention or sign Protocol No. 12 to the European Convention on Human Rights which prohibits discrimination of any kind in regard among other things of the minorities.

7. Interrelationship of soft and hard law

The 21st century has brought about the establishment of the European system of legal protection of the minorities, with all its specificities. European countries defined the relevant provisions under framework-type regulations; there are no mandatory provisions, only recommendations. The concept of minorities has not been defined, but minority rights have been listed. All this, however, occurred in association with some framework conditions, which are the following: each country should “by all reasonable means”, “if necessary, consider and/or encourage” the institution of minority rights in areas where the minority has been living “traditionally” in “significant” numbers. This means that it is not mandatory for the individual countries to provide for such rights; they have discretionary power. All this is also related to the fact that individual countries often apply soft law themselves in the area of minority protection, meaning that they re-iterate at national level the framework conditions referred to in the cor-

¹⁸ Jean-Marie WOEHLING: *Le Droit Constitutionnel français a l'épreuve des langues régionales* (French constitutional law put to the test of regional languages), <http://www.viventnoslangues.free.fr/docs/woehrling.htm>

responding international documents.¹⁹ As a consequence of which, in the absence of real hard law, national courts applying national minority law and international minority law transformed into internal law cannot take a stand in the enforcement of minority rights and cannot contribute to the development of minority law.

8. Struggle for language rights

Cultural and linguistic globalisation points towards some kind of uniformisation, especially in business life and in research where English has become the almost unique language of communication, especially in Europe. English has acquired a quasi-monopolistic position in the everyday work of the institutions of the European Union. Nevertheless, over the past 20 years the recognition of linguistic diversity has become a central topic in every country as well as in the European Union and the Council of Europe. Language usage, however, is a topical issue not only for the individual countries and the traditional national minorities: language knowledge and usage causes problems also in relation to the immigrant communities in Europe. The provisions of the ECRML do not apply to the latter; Member States may decide at their discretion what to expect of immigrant communities in terms of knowledge of the language; whether the immigrants and their family members should know/learn the language of the host country and how to provide for the use of their own language in e.g. schools and offices. The integration of immigrants being an issue of pan-European relevance, it is of utmost importance that the European Union strive to provide directives to Member States on that issue in the form of common guidelines.

Whereas the attitude of a country to language rights used to be a matter of legislation in the first place, it has become a constitution-level issue by now. Furthermore, although language right does not appear in the constitution directly as a fundamental right, constitutional protection can nevertheless be demonstrated through other rights. Freedom of speech, the prohibition of discrimination, the right to fair trial, the freedom of religion are all rights which concern the issue of language usage. In Canada, the Supreme Court declared the Quebec law ruling implying French as the exclusive language of commercial advertising and posters to be contrary to the freedom of speech. In the interpretation of the Supreme Court, with regard to the usage of language, freedom of speech means that at least in private/business relationships (advertising included) everyone should be entitled to use his/her own language. In France,

¹⁹ Sylvian COIPLÉ: *Les droits de minorités entre droits collectifs et droits individuels* (Minority rights, between collective and individual rights). Institut pour une triarticulation sociale, 7/1997, p. 7.

according to the French Language Act – the so-called Toubon Act of 1994 – which was meant to limit the spread of English, if the advert is in English, a French-language translation should be added. The European Court of Human Rights did not consider it discriminatory that in a Croatian village a child of Roma origin was taken out of a class and put in a bridging class instead to improve his deficient foreign language skills and return to the previous class thereafter. So far the European Court of Human Rights has abstracted from investigating the language-related claims of applicants in relation to their minority status (e.g. Podkolzina case in 2002, when a person belonging to the Russian-speaking minority claimed violation of his language rights).

The above examples give an ample proof of the highly sensitive nature of the language rights issue.²⁰ Both the majority and the minority have language rights. A country can decide at its discretion how many official languages it should have, whether the minority language should be recognised perhaps as national language or minority language. Contrary to the freedom of religion, the state cannot adopt a neutral attitude to language rights: state action is needed. If a country realises that, as opposed to assimilation, minority integration represents a social value, then it will find the ways and means to settle the minority language usage issue. Great Britain could be mentioned as a positive example. Although there can be no doubt as to the primacy of English, the UK has made considerable financial sacrifices to give official status to the Welsh, Gaelic and Irish languages in Wales, Scotland and Northern Ireland, respectively, in addition to English so as to allow the use of the above languages in public as well as in private relations. Especially Central and Eastern European states have a lot to learn from most Western European examples. In the CEE area, language rights are a source of constant tension; in some countries, even the signposting of settlement names in the minority language have provoked major disputes. It is also a problem that in areas with major minority populations, it is not ensured that, for example, public service contracts be available or ATMs communicate also in the minority language. The language rights are thus violated in this region on a daily basis and if a minority happened to make a claim in that respect, some political powers manipulating the majority would at once ring the alarm bell of nationalism. In these cases, language rights are likely to be damaged especially if some political power wants to make a case of that and restrict the language rights of the minorities on the ground of “protection of the majority”.

²⁰ Bruno DE WITTE: *L'évolution des droits linguistiques (Evolution of language rights)* (1983-2008), <http://www.eapc.es/documents/2008/25RLD/081203DeWitte.pdf>, Forthcoming in English: *Revista de Llengua i Dret*. Num. 51., June 2009.

9. Conclusion

It is not at all pointless to discuss the minority issue, language rights included, in the 21st century. It seems that some kind of European system of minority protection had evolved by the end of the 20th century. The minority issue, however, may raise questions not only in Europe, but also on other continents not covered by the present paper. It is essential to avoid the errors of the 19th and 20th centuries, the focal points in minority affairs previously. As for the relationship of the majority and the minority, it is to be avoided that the majority speak with fear or disdain of the minority, and the minority must know the limits to its claims and how far they can go within the limits of lawfulness.²¹

The re-discovery of lost or faded identity, of declining cultures will probably play a significant role in the 21st century. In the globalised world, in opposition to economic, financial and cultural globalisation, the national cultures and within them, the minority communities will do their utmost to exert pressure to promote their own survival. It is not by chance that according to the 2008 amendment of the French constitution, “regional languages are part of the heritage of France”. The right of identity is, indeed, part of the European and global cultural heritage, and it covers language, culture and community affiliation. The Lisbon Treaty puts it this way: “The European Union shall respect its rich cultural and linguistic diversity and shall ensure that Europe’s cultural heritage is safeguarded and enhanced”. National, ethnic and religious minorities are part of that and, therefore, it is not indifferent what the 21st century will bring in this regard: relaxed, correct minority life situations and international stability, or a return of the mistaken minority policies which had disappeared already.

SUMMARY

Minority Rights in the Era of Globalisation and Regionalisation

LÁSZLÓ TRÓCSÁNYI

The tendencies set off by globalisation and regionalisation are experienced in every country. At the same time the need for preserving identity is also tangible, especially among national and ethnic minorities. In the wake of the regime change in Central and Eastern Europe, minority policies and the legal status of minorities have attracted the attention, among other forums, of the

²¹ Philippe SUINEN: *Minorité(s) (Minority/Minorities)*, Bruxelles, Editions Luc Pire, 2002, p. 71.

Council of Europe, the European Union and the OSCE. The way a country treats its minorities is always closely related to its constitutional arrangement. The countries of Europe pursue various minority policies: the models range from the equality of all citizens, through autonomy and federalism to multiculturalism. Minority policies are closely linked to security policy. The volume of documents international organizations issue about minority rights has spectacularly risen in recent decades. Minority rights tend to belong to soft law. Voluminous as they are, the related international documents include recommendations rather than obligations. That having said, the monitoring mechanisms operated by international organizations are today the most important guarantees for the assertion of minority rights. Language rights have a prestigious position among minority rights. As language rights are always closely connected to other rights, they are recognized as separate rights only in few countries of Europe.

RESÜMEE

Minderheitenrechte in den Zeiten der Globalisation und der Regionalisierung

LÁSZLÓ TRÓCSÁNYI

Die Globalisierung und die Regionalisierung haben Prozesse in die Wege geleitet, die in jedem einzelnen Land ihre Wirkung zeigen. Parallel dazu kann auch das Bedürfnis nach Bewahrung der Identität gut nachgewiesen werden, vor allem seitens der nationalen und ethnischen Minderheiten. Die Beschäftigung mit der Minderheitenpolitik und dem Rechtsstand der Minderheiten ist dank des Europarates, der Europäischen Union und der OSZE vor allem infolge des Systemwechsels in Mittel- und Osteuropa immer mehr in den Vordergrund gerückt. Diejenigen Minderheitenmodelle, die mit der staatlichen Einrichtung der einzelnen Länder in engem Kontakt stehen, haben sich bereits herausgebildet. Die Minderheitenpolitik erscheint in den einzelnen Ländern Europas auf verschiedene Weisen: vom System, das auf der Gleichheit der Staatsbürger aufbaut, über den Föderalismus bis hin zum Multikulturalismus können mehrere Lösungen aufgezeigt werden. Die Minderheitenpolitik steht in enger Beziehung zur Sicherheitspolitik. Es ist gut nachweisbar, dass die Zahl der von internationalen Organisationen angefertigten Dokumente im Zusammenhang mit den Minderheitenrechten in den vergangenen Jahrzehnten in bedeutendem

Maße gestiegen ist. Die Minderheitenrechte gehören in erster Linie in die Kategorie des „Soft Law“; die internationalen Dokumente enthalten – trotz ihrer zunehmenden Zahl – wenige Verpflichtungen, formulieren eher Empfehlungen. Trotzdem können heute die Kontrollmechanismen der internationalen Organisationen als wichtigste Garanten angesehen werden, wenn es darum geht, dass die Minderheitenrechte zur Geltung gebracht werden. Unter den Minderheitenrechten kommt den Sprachrechten eine wichtige Rolle zu. Die Sprachrechte stehen stets in enger Verbindung zu einem anderen Recht, sodass das Sprachrecht – als selbständiges Recht – in den meisten Ländern Europas keine Anerkennung gefunden hat.

